IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ARGONAUT GREAT CENTRAL INSURANCE COMPANY, Plaintiff, v. HIGHLAND TOWNSHIP, ELK COUNTY, PENNSYLVANIA, Defendant.	)	CIVIL ACTION NO. 1:17-cv-29

COMPLAINT FOR DECLARATORY JUDGMENT

AND NOW, comes the Plaintiff, Argonaut Great Central Insurance Company, by and through its attorneys, Marshall Dennehey Warner Coleman & Goggin, and Patricia A. Monahan, Esquire, and hereby files pursuant to 28 U.S.C. §§ 2201-2202, this action for a Declaratory Judgment, and in support avers the following:

PARTIES

1. Argonaut Great Central Insurance Company, ("Argonaut"), is a corporation incorporated and existing under the laws of Illinois, with its principal place of business at 8210 N. University Street, Peoria, IL 61615.

2. Highland Township, Elk County, Pennsylvania is a governmental entity organized under the Second Class Township Code, 53 P.S. § 65101, et seq. and/or the Home Rule Charter and Options Law, 53 Pa.C.S. § 2901, et seq.

3. The Highland Township Board of Supervisors, Elk County, Pennsylvania is the governing body of Highland Township, Elk County, Pennsylvania, and is not a legal entity separate from Highland Township, Elk County, Pennsylvania.

4. Highland Township, Elk County, Pennsylvania has a business office located at 363 Pennsylvania Avenue, James City, PA 16743.

JURISDICTION AND VENUE

5. This Honorable Court has personal jurisdiction over the Defendant because it is a Pennsylvania local government.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, because underlying Lawsuits, *Seneca Resources Corporation v. Highland Township, Elk County, Pennsylvania and the Highland Township Board of Supervisors, Elk County, Pennsylvania, infra,* are venued in this District, the alleged operative facts of the underlying Lawsuits occurred in this District and the Defendant does business within this District.

FACTUAL BACKGROUND

A. THE UNDERLYING LAWSUITS

7. On February 18, 2015 Seneca Resources Corporation ("Seneca") filed a Lawsuit against Highland Township, Elk County, Pennsylvania and the Highland Board of Supervisors, Elk County, Pennsylvania at 1:15-cv-00060 in the United States District Court for the Western District of Pennsylvania, ("2015 Lawsuit").

8. Seneca filed an Amended Complaint in the 2015 Lawsuit on April 6, 2015.

9. The 2015 Lawsuit is currently on appeal in the United States Court of Appeals for the Third Circuit at No. 16-3592.

10. On November 30, 2016 Seneca filed a second Lawsuit against Highland Township, Elk County, Pennsylvania and the Highland Township Board of Supervisors, Elk County, at 1:16-cv-00289 in the United States District Court for the Western District of Pennsylvania, ("2016 Lawsuit").

11. The 2015 Lawsuit was pending before the Honorable Susan Paradise Baxter, prior to the appeal to the Third Circuit. (A true copy of an Amended Complaint in the 2015 Lawsuit is attached hereto as Exhibit A, with its Exhibits omitted, other than Exhibit A, Ordinance No. 1-9 of 2013).

12. The 2016 Lawsuit is pending before the Honorable Susan Paradise Baxter. (A true copy of the Complaint in the 2016 Lawsuit is attached hereto as Exhibit B, with its Exhibits omitted other than Exhibit A, Proposed Home Rule Charter of the Township of Highland, Elk County, Pennsylvania).

13. Both the 2015 and 2016 Lawsuits arise out of Highland Township's enactment of Ordinance No. 1-9 of 2013, which Seneca contends prevents it from converting certain of its natural gas wells located in Highland Township into underground injection control ("UIC") wells despite its permit to do so from the United States Environmental Protection Agency. (Exhibit A ¶ 1, Exhibit B ¶ 1).

14. The Amended Complaint in the 2015 Lawsuit alleges that Highland Township amended Ordinance 1-9 on March 24, 2015 to include a prohibition on disposal and the storage of brines within the Township and purporting to invalidate state and federal permits authorizing the storage of brines within the Township. (Exhibit A, ¶ 1)

15. Seneca further alleges that Ordinance No. 1-9 of 2013 unlawfully provided that corporations shall not have the rights of persons afforded by the United States and Pennsylvania Constitutions, and that corporations shall not have the authority or power to enforce state or federal preemptive law against the people of Highland Township or to challenge or overturn municipal ordinances adopted by the Township. (Exhibit A ¶ 39).

16. Count I of the 2015 Lawsuit is a claim that Ordinance 1-9 of 2013 is preempted under the Federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; Count II is a claim that Ordinance 1-9 of 2013 is preempted by the Pennsylvania Oil and Gas Act, 58 Pa.C.S. § 2301 et seq.; Count III is a claim that the Township has engaged in an impermissible exercise of police power and that Ordinance 1-9 of 2013 is thereby invalid and unenforceable; Count IV is a claim that Ordinance 1-9 of 2013 violates the Supremacy Clause; Count V is a claim that Ordinance 1-9 of 2013 constitutes illegal exclusionary zoning under Pennsylvania law and is therefore invalid and unenforceable; Count VI is a claim that Ordinance 1-9 of 2013 is an impermissible exercise of legislative authority and is therefore invalid and unenforceable; Count VII is a claim that Seneca's First Amendment rights have been violated because Ordinance 1-9 of 2013 purports to divest corporations such as Seneca their constitutional right to petition the government for redress of grievances; Count VIII is a claim for violation of Seneca's substantive due process rights wherein Seneca alleges that the enactment of Ordinance 1-9 of 2013 was deliberate, arbitrary, irrational, in excess of the limits of governmental authority, an abuse of official power, and shocking the conscience; Count IX is a claim that Ordinance 1-9 of 2013 violates Seneca's procedural due process rights in that it provides for no process or procedure that Seneca could use to challenge the provision of Ordinance 1-9 of 2013 that purports to render invalid any permit that allows underground injection of produced fluid to be conducted within the Township and devalues any legal interest related thereto.

17. Seneca alleges in the 2015 Lawsuit that as a result of the Township's actions it has suffered and will continue to suffer hardship, irreparable injury and damages. Seneca seeks declaratory relief that Ordinance 1-9 of 2013 is invalid for all of the reasons asserted in its Amended Complaint and it seeks compensatory and consequential damages under 42 U.S.C.

§ 1983, attorney fees and costs incurred in the 2015 Lawsuit, and preliminary and permanent injunctive relief.

18. In the 2016 Lawsuit, Seneca alleges that the Lawsuit's purpose is to enjoin Highland Township and its Board of Supervisors from enforcing a Home Rule Charter that violates the Supremacy Clause of the United States and that also violates Seneca's constitutional rights under the First, Fifth and Fourteenth Amendments to the Constitution. (Exhibit B, ¶ 1).

19. Seneca's 2016 Lawsuit references the Township's "Proposed Home Rule Charter of the Township of Highland, Elk County, Pennsylvania." (See Exhibit A to Exhibit B herein, which will be referenced *infra*, as Exhibit C).

20. The Highland Township Home Rule Charter was approved in the 2016 general election and has been in effect since that time. (Exhibit C).

21. Article I of Highland Township's Home Rule Charter is identified as a "Bill of Rights" and sets forth the same "Bill of Rights" that were previously contained within Highland Township Ordinance No. 1-9 of 2013. Article II of the Home Rule Charter states that the name of the municipality shall be "Highland Township," that it shall operate as a Home Rule municipality and the prior municipality's existence is terminated. (Exhibit C).

22. The Highland Township Home Rule Charter further states that "[N]o prior rulings or decisions by any court, or consent decrees or other settlement agreements entered into between any party and the prior municipality—or the elected or appointed officials of the prior municipality—shall bind the new government established by this Charter, nor shall those rulings, decisions, consent decrees, or other settlement agreements limit the liability, authority or power of the residents of Highland Township to enforce the rights and provisions secured by their Charter." (Exhibit C).

23. Article III of the Home Rule Charter identifies the governing board as three supervisors elected from the Township at-large and states that the supervisors in office at the time the Charter took effect shall remain in office for their full terms, but that they shall only have the responsibilities, duties and authority as set forth in the Charter. (Exhibit C).

24. Counts I and II of the 2016 Lawsuit allege that the Home Rule Charter is preempted by the Federal Safe Drinking Water Act, 42 U.S.C. § 300f and the Pennsylvania Oil & Gas Act, 58 Pa.C.S. § 2301, et seq.; Count III alleges that the Home Rule Charter is an impermissible exercise of police power; Count IV is a claim for violation of the Supremacy Clause; Count V is a claim for exclusionary zoning; Count VI is a claim for impermissible exercise of legislative authority in that the Pennsylvania Home Rule Charter Law does not allow municipalities to expand legislative power; Count VII is a First Amendment Claim because the Home Rule Charter purports to divest corporations such as Seneca of their constitutional right to petition the government for redress of grievances; Count VIII is a substantive due process claim for violating Seneca's rights under the First, Fifth and Fourteenth Amendments; and Count IX is a procedural due process claim because the Home Rule Charter provides for no process or procedure that Seneca could utilize to challenge the provisions of the Home Rule Charter that purport to invalidate any permit that allows underground injection of produced fluid to be conducted within the Township.

25. Seneca alleges that portions of the Home Rule Charter are "substantially identical" to Ordinance 1-9 of 2013, which this Honorable Court ruled unconstitutional in the 2015 Lawsuit. (Exhibit B, ¶2).

26. Seneca alleges that Highland Township and the Highland Township Board of Supervisors conceded that Ordinance 1-9 of 2013 was of 2013 was unconstitutional. Yet, the

Township enacted the Home Rule Charter that illegally attempts to replicate the effective but unconstitutional ordinance. (Exhibit B ¶ 2).

27. Seneca further alleges in the 2016 Lawsuit that the Home Rule Charter is also "substantially identical" to an ordinance that Grant Township, Pennsylvania had enacted and which this Court also found unconstitutional in *Pennsylvania General Energy Company, LLC v. Grant Township*, Document Nos. 113 and 114 (W.D. Pa. October 14, 2015). (Exhibit C, ¶2).

28. Highland Township rescinded Ordinance 1-9 of 2013 on August 10, 2015. Thereafter on August 11, 2016, the Township entered into a Consent Decree that was filed with the Court on August 11, 2016 in the 2015 Lawsuit. The Court approved the Consent Decree on August 12, 2016. (Exhibit B, ¶29-32).

29. However, the 2015 Lawsuit is currently on appeal in the United States Court of Appeals for the Third Circuit because a Motion to Intervene filed by Crystal Springs Ecosystem, Highland Township Municipal Authority, and Citizens Advocating a Clean Healthy Environment had moved to intervene. This Honorable Court denied the Motion to Intervene and those parties filed an appeal after this Honorable Court had approved the Consent Decree on August 12, 2015.

B. THE ARGONAUT INSURANCE POLICY.

30. Highland Township, Elk County, Pennsylvania and the Highland Township Board of Supervisors, Elk County, Pennsylvania have tendered their defense in the 2015 and 2016 Lawsuits to Argonaut under the claims-made commercial insurance package that Argonaut issued to Highland Township, specifically, the Public Officials Liability Coverage Part, Policy no. PO-463216900, effective July 3, 2014 to July 3, 2015, ("The Policy").

31. Argonaut has been defending Highland Township, Elk County, Pennsylvania and the Highland Township Board of Supervisors, Elk County, Pennsylvania in the 2015 and 2016 Lawsuits.

32. A true copy of the Policy Declarations and the relevant Public Officials Liability Coverage Part, Policy No. PO-463216900, effective July 3, 2014 to July 3, 2015 (with premium information redacted) is attached hereto as Exhibit D.

33. The Public Official's Liability Coverage Part form provides, in pertinent part:

SECTION I — COVERAGES

A. Insuring Agreement

We will pay on behalf of the insured those sums that the insured becomes legally obligated to pay as "damages" because of a "wrongful act" committed anywhere in the world to which this insurance applies. This insurance DOES NOT apply to any "claim" resulting from a "wrongful act" that commenced prior to the Retroactive Date shown in the declarations.

This insurance applies only to a "claim" for "damages" first made against any insured during the policy period or any Extended Reporting Period we provide under SECTION V EXTENDED REPORTED PERIODS. A "claim" will be deemed to have been made when notice of such "claim" is received and recorded by you or your "designee" or by us, whichever comes first;

All "claims" arising out of the same "wrongful act" will be deemed to have been made at the time the first of those "claims" is made against any insured.

We will have the right and duty to defend the insured against any "suit" seeking "damages". However, we will have no duty to defend the insured against any "suit" seeking "damages" for a "wrongful act" to which this insurance does not apply. We may, at our discretion, investigate any "wrongful act" and settle any "claim" or "suit" that may result. However:

a. The amount we will pay for "damages" is limited as described in Section III Limits Of Insurance And Deductible; and

b. Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments (Section I. C.).

B. Exclusions

This insurance does not apply to:

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5. Any "claim" flowing from or originating out of:

   a. a dishonest, malicious, fraudulent or criminal act, error or omission by any person, or

   b. a knowing violation of any law, statute or governmental regulation.

   This exclusion applies only to the insured(s) who committed or had knowledge of the fraudulent, criminal or dishonest act, error, omission or violation of law. However if it is later established by a judgment or other final adjudication that the allegation was not proven, we will reimburse the insured for the reasonable costs of defense

12. Any claim arising out of:

   a. Any prior and/or pending litigation as of the effective date of this Coverage Part set forth in the Declarations, or

   b. Any fact, circumstance, situation, transaction or event underlying or alleged in such litigation, regardless of the legal theory upon which such claim is predicated.

14. Any "claim" for relief that is equitable in nature and is not payable in money, or any request for equitable or injunctive relief, or the insured's cost to comply with any such non-monetary relief.

   If a "suit" seeks both monetary "damages" and non-monetary relief, we will defend the "suit".

SECTION II — WHO IS AN INSURED

You are an insured, and

Each of the following is an insured but only for acts that are both within the scope of his or her duties for you, and motivated, at least in part, by a purpose to serve you:

1. Any member of the governing body of the named insured.

2. Any board, commission, agency, authority, administrative department, or other similar unit operated by you and under your jurisdiction and within your budget.

3. All your past, present, and future elected, appointed, or employed officials.

4. Any "employee" or authorized "volunteer" of the named insured.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a named insured in the Declarations.

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SECTION IV – CONDITIONS

B. Duties of the Named Insured

1. The Named Insured in the Declarations, or if multiple entities are named, the first of such entities, shall be the sole agent, and shall act on behalf, of each insured with respect to all matters under this Coverage Part, including but not limited to:

   a. Giving notice of any "claim";

   b. Giving or receiving notice of cancellation;

   c. Receiving any other written notice or correspondence from us;

   d. Consenting to the settlement of any "suit";

   e. The receipt and acceptance of this Coverage Part and any endorsements to this Coverage Part;

   f. The payment of any premium due under this Coverage Part;

   g. The receipt of any return premiums that may become due under this Coverage Part; and

   h. The exercise of any rights under Section V Extended Reporting Periods; and

2. Each insured agrees that the Named Insured in the Declarations, or if multiple entities are named, the first of such entities, shall act on their behalf.

C. Duties In The Event Of A "Claim", "Suit" or "Wrongful Act"

1. You must see to it that we are notified of a "wrongful act" which may result in a "claim" covered by this Coverage Part as soon as practicable *after* the "wrongful act" is known by you, or your "designee".

To the extent possible, notice should include:

a. How, when and where the "wrongful act" took place;

b. The names and addresses of any injured persons or witnesses; and

c. The nature and location of any injury or damage arising out of the "wrongful act".

Notice of a "wrongful act" is not notice of a "claim".

2. If a "claim" is made or "suit" is brought against any insured, you must:

a. Record the specifics of the "claim" or "suit" and the date received as soon as you, or your "designee" is notified of it;

b. Notify us as soon as practicable after you or your "designee" learns of the "claim" or "suit". You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.

3. You and any other involved insured must:

a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";

b. Authorize us to obtain records and other information;

c. Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and

d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

4. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent

5. Notice given by or on behalf of:

a. The insured;

b. The injured person;

c. Any other claimant;

to a licensed agent of ours with particulars sufficient to identify the insured shall be deemed notice to us.

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SECTION IV – CONDITIONS

J. Representations

By accepting this coverage part, you agree:

1. The application and the declaration are the basis of this coverage part and are to be construed as incorporated in and constituting part of this coverage part;
2. The statements in your application are accurate and complete;
3. Those statements are representations you made to us; and
4. We have issued this coverage part in reliance upon you representations.

SECTION VI – DEFINITIONS

C. "Claim" means written or oral demand, including a "suit", to hold the insured responsible for an alleged or actual wrongful act where payment of "damages" is sought.

D. "Damages" means money "damages". "Damages" does not include any amount awarded as liquidated "damages" pursuant to any federal or state statute. "Damages" does not include punitive "damages", unless required by state law.

O. "Wrongful Act" means any actual or alleged error, omission or breach of duty committed by any insured. All acts, errors or omissions committed by one or more insureds that are substantially the same or are in any way directly or indirectly related -- either logically, causally or temporally -- shall be deemed to constitute one wrongful act, regardless of the number of "claims" or claimants.

34. In letters dated April 2, 2015, April 14, 2015 and June 16, 2016, Trident Insurance, as the authorized claims representative of the Argonaut Great Central Insurance Company, notified Highland Township and the Highland Township Board of Supervisors that Argonaut was reserving its rights to decline coverage for indemnity and defense from the underlying 2015

Lawsuit under the Policy. True copies of the Reservation of Rights letters are set forth as Exhibits D, E and F.

35. Similarly, Trident Insurance notified Highland Township and the Highland Township Board of Supervisors in a December 23, 2016 letter that it was reserving its rights under the Policy to decline coverage for indemnification and defense from the allegations in the 2016 Lawsuit. (Exhibit G).

36. No coverage exists for the Highland Township Board of Supervisors for indemnity or defense in the underlying 2015 and 2016 Lawsuits for the same reasons that no such coverage exists for Highland Township.

C. HIGHLAND TOWNSHIP, ELK COUNTY, PENNSYLVANIA WAS ON NOTICE OF SENECA'S CLAIM PRIOR TO THE INCEPTION OF THE SUBJECT ARGONAUT POLICY.

37. Seneca's counsel, Brian J. Clark, notified Highland Township in a January 25, 2016 letter that Seneca contended that Township Ordinance No. 1-9 of 2013 violated federal and state law and constituted an impermissible exercise of police power by the Township. Attorney Clark advised that Seneca would pursue litigation in federal court to invalidate Ordinance 1-9 of 2013 and it reserved it rights to seek fees and costs associated with such a lawsuit. Seneca further demanded that the Township immediately revoke Ordinance 1-9 of 2013 or Seneca it would "take all appropriate recourse against the Township."

38. In a February 18, 2013 meeting, the Highland Township Board of Supervisors discussed the possibility of litigation filed by Seneca.

39. During a March 18, 2013 meeting, the Highland Township Board of Supervisors contemplated that Seneca's threatened litigation could result in a lawsuit that could last for two to four years.

40. During a February 12, 2014 meeting the Highland Township Board of Supervisors again contemplated Seneca's threatened litigation concerning Ordinance 1-9 of 2013. One Supervisor stated that he was worried about a "terrible lawsuit." Residents also discussed concerns about the cost of a lawsuit.

41. On February 26, 2014, the Highland Township Board of Supervisors discussed retaining counsel with respect to Seneca's threatened lawsuit. The Supervisors further contemplated what their insurer's interests would be in defending any said lawsuit.

42. On March 12, 2015, at a Township meeting, the Highland Township Board of Supervisors discussed their anticipation of a lawsuit filed by Seneca Resources and Highland Township's duty to notify its insurer of a lawsuit.

43. At the March 12, 2014 Township meeting a Township supervisor informed the public that the Township intended to enter into an agreement with the Community Environmental Legal Defense Fund ("CELDF") for legal services pertaining to Seneca's threatened litigation. Attorney Thomas Linzey of CELDF discussed with the Township that its insurance carrier must be notified of any litigation.

44. Highland Township entered into a retainer agreement with CELDF on March 12, 2014.

45. At the time of the Highland Township meetings discussed *infra*, Argonaut did not insure Highland Township or the Highland Township Board of Supervisors.

46. Highland Township, its Supervisors and Officers were well aware of Seneca's claim when it applied for the Argonaut policy in June 2015. Yet, when asked on the application if the Township was aware of "any incident(s), accident(s) or occurrence(s) which may result in a claim" it checked "no."

47. The Township Secretary/Treasurer, Christy Reigel, signed the Policy application on or about June 30, 2015, despite having been present at each of the Township meetings discussed *infra*. A true copy of the application is attached hereto as Exhibit H.

COUNT I

48. Paragraphs 1 through 47 are incorporated herein as if set forth fully.

49. No coverage exists under the Argonaut Policy for the defense or indemnification of Highland Township, Elk County and/or the Highland Township Board of Supervisors, Elk County, Pennsylvania because the claims in the underlying 2015 and 2016 Lawsuits constitute a loss that was known prior to the June 30, 2014 Policy application and prior to the July 3, 215 Policy inception.

WHEREFORE, Plaintiff Argonaut Great Central Insurance Company respectfully requests that judgment be entered declaring that the Argonaut Policy does not provide for a defense or indemnification to Highland Township, Elk County, Pennsylvania or the Highland Township Board of Supervisors, Elk County, Pennsylvania for the allegations in the underlying 2015 and 2016 Lawsuits.

COUNT II

50. Paragraphs 1 through 49 are incorporated herein as if set forth fully.

51. To the extent that the claims in the 2015 and 2016 Lawsuits could possibly constitute a "wrongful act" within the meaning of the Argonaut Policy, any said "wrongful act" is not

covered under the terms and conditions of the Argonaut Policy because it arose out of a claim for which the Township was placed on notice prior to policy inception.

WHEREFORE, Plaintiff Argonaut Great Central Insurance Company respectfully request that judgment be entered declaring that the Argonaut policy does not provide for a defense or indemnification to Highland Township, Elk County, Pennsylvania or the Highland Township Board of Supervisors, Elk County, Pennsylvania for the allegations in the underlying 2015 and 2016 Lawsuits.

COUNT III

52. Paragraphs 1 through 51 are incorporated herein as if set forth fully.

53. No coverage is owed to Highland Township, Elk County, Pennsylvania or the Highland Township Board of Supervisors, Elk County, Pennsylvania because Highland Township misrepresented on the Policy application that it was unaware of any incident(s), accident(s) or occurrence(s) which may result in a claim.

54. Instead, the Township applied for the Policy while waiting to be served with a Lawsuit filed by Seneca, given that the Lawsuit was very much anticipated.

55. The Highland Township misrepresentation was known to the Highland Township's Board of Supervisors and its officers and representatives.

56. The Highland Township Policy misrepresentation was made knowingly as the Highland Township Board of Supervisors had even discussed how their insurance company would respond to a lawsuit filed by Seneca.

57. Highland Township's Policy misrepresentations were false, made knowingly, fraudulently, or otherwise were made in bad faith, and were material to the risk that they sought Argonaut to assume.

58. The Argonaut Policy is therefore void *ab initio.*

59. Public policy prevents coverage to Highland Township, Elk County, Pennsylvania or the Highland Township Board of Supervisors, Elk County, Pennsylvania for a defense or indemnification from the 2015 and 2016 Lawsuits because of the misrepresentation of the Policy application.

WHEREFORE, Plaintiff Argonaut Great Central Insurance Company respectfully request that judgment be entered declaring that the Argonaut policy does not provide for a defense or indemnification to Highland Township, Elk County, Pennsylvania or the Highland Township Board of Supervisors, Elk County, Pennsylvania for the allegations in the underlying 2015 and 2016 Lawsuits because.

COUNT IV

60. Paragraphs 1 through 58 are incorporated herein as if set forth fully.

61. Highland Township and the Highland Township Board of Supervisors acted knowingly in violation of the law in enacting Ordinance 1-9 of 2013.

62. Highland Township and the Highland Township Board of Supervisors were aware that Ordinance 1-9 of 2013 was unlawful at the time that it was enacted.

63. Highland Township and the Highland Township Board of Supervisors were advised by their legal representatives, prior to its enactment, that Ordinance 1-9 of 2013 was unlawful.

64. Highland Township, acting through the Highland Township Government Study Commission and its representatives, acted knowingly and illegally in reenacting Ordinance 1-9 of 2013 by recommending, drafting and proposing the Home Rule Charter that was ultimately approved in the 2016 general election. (Exhibit C).

65. Highland Township, acting through the Highland Township Government Study Commission and its representatives, was aware that the Home Rule Charter was unlawful at the time that the Home Rule Charter was recommended, drafted and proposed to the voters in the 2016 general election.

66. Highland Township, acting through the Highland Township Government Study Commission and its representatives, had been advised by legal counsel that the Home Rule Charter was unlawful, prior to the time and during the time that the Home Rule Charter was recommended, drafted and proposed to the voters in the 2016 general election.

WHEREFORE, Plaintiff Argonaut Great Central Insurance Company respectfully request that judgment be entered declaring that the Argonaut policy does not provide for a defense or indemnification to Highland Township, Elk County, Pennsylvania or the Highland Township Board of Supervisors, Elk County, Pennsylvania for the allegations in the underlying 2015 and 2016 Lawsuits.

COUNT V

67. Paragraphs 1 through 64 are incorporated herein as if set forth fully.

68. The Highland Township and the Highland Township Board of Supervisors that Argonaut agreed to contractually insure are no longer in existence, due to the enactment of the Home Rule Charter.

69. From the time of the general election in November 2016 Highland Township, Elk County, Pennsylvania and the Highland Township Board of Supervisors can no longer be afforded insurance under the Policy because they are entirely different legal entities and thus they have no rights under the Policy.

WHEREFORE, Plaintiff Argonaut Great Central Insurance Company respectfully request that judgment be entered declaring that the Argonaut policy does not provide for a defense or indemnification to Highland Township, Elk County, Pennsylvania or the Highland Township Board of Supervisors, Elk County, Pennsylvania for the allegations in the underlying 2015 and 2016 Lawsuits.

Respectfully submitted,

MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN

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